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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Calling Party Pays Service Option,
in the Commercial Mobile Radio Services

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WT Docket No. 97-207

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

VANGUARD CELLULAR SYSTEMS, INC.

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SUMMARY

Vanguard supports the Commission's initiative in the present proceeding and the CTIA Petition to the extent it requests the Commission to issue an NPRM for the calling party pays ("CPP") service option. Vanguard believes that the Commission should work steadfastly towards a limited set of rules that will allow CMRS providers to implement CPP on a national basis.

The Commission should adopt a notice of proposed rulemaking because implementation of CPP not only will benefit consumers but will further the Commission's goals of increasing competition in the telecommunications marketplace. The benefits associated with CPP, including increased CMRS subscribership, inbound traffic, and overall CMRS usage, can be seen directly in the foreign countries that have successfully implemented CPP. Indeed, CPP has been successful everywhere in the world where it has been implemented — the use of wireless phones has become as commonplace as the use of landline phones and wireless users are ubiquitous. Because there is no evidence to suggest that this wide range of international successes will not be duplicated in the U.S., the international CPP model is extremely relevant to this proceeding.

The international model also demonstrates how U.S. consumers are hurt by the absence of the CPP service option. Unlike consumers in countries that have implemented CPP, U.S. customers are denied the practical ability to receive incoming calls. As a result, the amount of inbound traffic to U.S. wireless customers is substantially less than to landline customers, and the level of service and flexibility available to U.S. wireless consumers is not comparable to what is provided to overseas consumers. The Commission must, therefore, take action in this proceeding

to advance CMRS as a true competitor in *both* the U.S. and international telecommunications marketplace.

The Commission should focus the NPRM on the minimum rules necessary for the proper implementation of CPP, namely billing and collection and consumer notification. LEC billing and collection, which is easily accomplished and does not harm the LECs in any way, is the critical component of CPP and will determine whether CPP will be successfully implemented. While certain alternatives to LEC billing and collection have been suggested in place of LEC billing, *e.g.*, wireless billing and individually negotiated LEC/CMRS agreements, these solutions are practically and economically infeasible for wireless providers.

The Commission has the legal authority to implement LEC billing and collection rules on a national uniform basis pursuant to Section 251 of the 1996 Act. Indeed, under Section 251 the Commission has the authority to define billing and collection as a network element that must be made available by incumbent LECs. The Commission also can adopt national billing standards for CPP pursuant to its Title I authority over interstate communications and its Section 332 authority over CMRS rate and market entry.

In addition to adopting a billing and collection regime for CPP, the Commission should implement a nationwide notification policy that ensures that callers are aware they will be charged for the completed CPP call. Such notification should consist of an initial branding message that will inform the caller that charges will apply and that the caller has a choice of whether or not to complete the call. Consistent with its Section 332 authority, the Commission should preempt all state notification rules to avoid the possibility of conflicting state notification requirements that would virtually eliminate the ability of CMRS providers to offer CPP.

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COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits its comments on the Cellular Telecommunications Industry Association's ("CTIA") Petition for Expedited Consideration in the above-referenced proceeding.^{1/} Because the calling party pays ("CPP") service option has the potential to revolutionize the competitive development of the Commercial Mobile Radio Services ("CMRS") industry nationwide, the Commission should work steadfastly towards a limited set of rules that will allow CMRS providers to implement CPP on a national basis.

^{1/} In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services, *CTIA Petition for Expedited Consideration*, WT Docket No. 97-207, DA 98-468 (filed February 23, 1998) ("CTIA Petition"). See also Commission Seeks Comment on "Petition for Expedited Consideration of the Cellular Telecommunications Industry Association" in the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Service, *Public Notice*, WT Docket No. 97-207, DA 98-468 (rel. March. 9, 1998).

I. INTRODUCTION

On October 23, 1997, the Commission initiated this proceeding with a Notice of Inquiry (“NOI”) seeking information on the CPP service option.^{2/} Many parties, including Vanguard, filed comments and reply comments in response to the Commission’s inquiry. Vanguard’s comments, as well as those of many other parties, demonstrated the need for CPP and how CPP will offer consumers lower prices and more choice in the telecommunications marketplace. On the basis of those comments, CTIA filed its petition and urged the Commission to “issue, without delay, an NPRM to adopt CPP service rules. . . .”^{3/} Vanguard offers these comments in support of the CTIA Petition and the Commission’s initiative to pursue CPP as a CMRS service option.

II. THE COMMISSION SHOULD ADOPT A NOTICE OF PROPOSED RULEMAKING BECAUSE IMPLEMENTATION OF CPP WILL BENEFIT CONSUMERS AND INCREASE COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY**A. CPP Will Benefit Consumers**

As most parties agree, U.S. consumers will benefit from the availability CPP.^{4/} CPP will offer consumers lower prices and more choice in the telecommunications marketplace. Specifically, CPP will provide consumers more predictability and control over what they spend for both incoming and outgoing calls. By eliminating the costs for incoming calls, CPP will encourage wireless subscribers to circulate their numbers more freely, increase the amount of

^{2/} In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services, *Notice of Inquiry*, WT Docket No. 97-207, FCC 97-341 (rel. October 23, 1997).

^{3/} CTIA Petition at 9.

^{4/} See, e.g., Sprint PCS Comments at 4; Motorola Comments at 2-7; Omnipoint Comments at 19; CTIA Comments at 2.

traffic in both the wireless and wireline networks and encourage new subscribers. Indeed, as explained in a recent article in the *Mobile Phone News*, the “number of wireless phone users who don’t know their own number or who don’t regularly give their number to others could shrink from the nearly 50 percent . . . if more carriers offer the calling party pays option”^{5/} As Michael Broom of AT&T recently reported about AT&T’s current CPP trials, “the number of minutes and the number of inbound calls have increased, . . . [and CPP] gives customers a new level of control.”^{6/} Analysts at Merrill Lynch & Co. agree, noting that AT&T’s CPP service “could be an example of a significant change to the industry.”^{7/}

In addition to providing consumers with more control and increasing the number of CMRS subscribers, CPP also permits more ubiquity in communications by providing consumers with the ability to reach those persons not on landline phones, and by affording consumers more opportunity to communicate with others. Wireless service offerings such as CPP that provide consumers with greater flexibility in meeting their communications needs should be pursued by the Commission. Indeed, as Chairman Kennard recently noted “[c]ustomers love wireless. And why not? It frees you from the network. Instead of you coming to the network the network comes

^{5/} *AT&T Using Calling Party Pays with 500 Code*, MOBILE PHONE NEWS, May 4, 1998, at 5 (hereinafter MOBILE PHONE NEWS). Currently, over 80 percent of wireless subscribers give out their numbers to *less than* 10 people.

^{6/} *Id.* at 6.

^{7/} *Id.*

to you.”^{8/} CPP will increase this “love” of wireless, by offering consumers more options and lower prices.

B. CPP Will Increase Competition in the Telecommunications Marketplace

CPP has the potential to revolutionize the competitive development of the CMRS industry and further Chairman Kennard’s goal of promoting competition in the local exchange.^{9/} Because CPP has the potential to expand CMRS subscribership and, thus the amount of inbound traffic and overall CMRS usage, CPP also has the potential to encourage CMRS penetration and presence in the marketplace.^{10/} Indeed, Merrill Lynch has concluded that, “if we could really achieve a world with calling party pays in the next two to five years, we think it could have a material effect on wireless growth rates and valuations.”^{11/} CPP also will have significant incremental competitive effects because it will shift minutes from landline to wireless and spur competition in the local markets.

Given the advantages of CPP for consumers and competition, the Commission should adopt a notice of proposed rulemaking (“NPRM”) for the CPP service option. As CTIA notes in its petition, the “record in this proceeding supports the rapid issuance of an NPRM to adopt

^{8/} See REMARKS BY WILLIAM E. KENNARD, CHAIRMAN FEDERAL COMMUNICATIONS COMMISSION TO WIRELESS 98, February 23, 1998.

^{9/} See, e.g., PRESS STATEMENT OF CHAIRMAN WILLIAM E. KENNARD ON THE SECOND ANNIVERSARY OF THE TELECOM ACT OF 1996, January 30, 1998 (noting that “[w]e are beginning to see the early, promising buds of competition. Our job is to nurture those buds, protect them from a premature frost, and to encourage even wider growth for competition, especially for residential consumers.”).

^{10/} This result is consistent with the Commission’s initiative in licensing PCS and authorizing up to six new PCS entrants per market.

^{11/} MOBILE PHONE NEWS at 6 (citing analysts from Merrill Lynch & Co.).

Federal rules governing CPP service offerings.”^{12/} An NPRM will provide the Commission with an opportunity to “explore means of encouraging and facilitating competition in the local exchange telephone market,” as well as to further its commitment to “taking necessary actions to increase consumer options for local telephone service.”^{13/} The Commission should not overlook this opportunity to advance competition in the local telecommunications marketplace.

C. The Foreign Experience Shows the Consumer Benefits and Increases in Market Penetration that Result from CPP

The positive impact of CPP on the telecommunications industry can be seen in the foreign countries that have successfully implemented CPP. Indeed, as many parties have explained, the international CPP model provides useful insight into the benefits of the CPP service option.^{14/}

1. CPP Is Successful Overseas

Experience abroad demonstrates that CPP advances local exchange competition by increasing the number of calls to cellular subscribers and increasing the use in the network. In Vanguard’s experience overseas, for instance, wireless phones are used equally for both incoming and outgoing calls.^{15/} Customers in foreign telecommunications markets where CPP

^{12/} CTIA Petition at 2.

^{13/} NOI at ¶ 1. In many ways, this proceeding is analogous to other proceedings in which the FCC has enabled the development of new competitive services, such as PCS.

^{14/} See AirTouch Comments at 9; Nokia Comments at 2-3; Omnipoint Comments at 20; Sprint PCS Comments at 2-3.

^{15/} Indeed, during a recent tour to the United States and to Vanguard’s headquarters by a delegation from Slovenia, members of the delegation repeatedly questioned why Americans did not receive *any* calls on their wireless handsets.

has been implemented are much more available and reachable because of the CPP service option. Indeed, the foreign model demonstrates that CPP “has a dramatic effect on the affordability of wireless as it shifts the costs of service to both the caller and receiving party.”^{16/} The advantages of CPP have resulted in its worldwide availability. Among the major wireless markets, only a handful of nations do not have CPP, including the United States, Canada, China, India, Indonesia, Mexico and Chile, and this group is shrinking steadily. Indeed, according to the Yankee Group, Chile, China and Mexico will implement CPP billing systems this year.

Another indication that CPP benefits telecommunications industries throughout the world is the level of wireless investment in countries where CPP is available. In Vanguard’s experience, international wireless investors are less likely to consider investing in countries where CPP has not been implemented because the success of wireless as a true competitor in those countries is far less than in countries that have implemented CPP. In fact, the availability of CPP is a basic element of Vanguard’s investment decisions. Such targeted investment illustrates the successful impact of CPP on the telecommunications marketplace in countries where the CPP service option is in place.

The benefits of CMRS are evident not only from reports and statistics, but also from day-to-day wireless practices overseas. Indeed, the success of CPP is evident on every street corner and in every restaurant in Europe and throughout the world, because consumers carry and use their wireless phones constantly. As *Wired* magazine recently noted, “[a] brief jaunt almost

^{16/} See *Yankee Group Around the World, Global Trends and North American Regional Forecasts of the Cellular/PCS Markets*, WIRELESS/MOBILE COMMUNICATIONS, Feb. 1998, at 7 (“Yankee Group Report”).

anywhere in Israel . . . reveals that the Jewish state is chock-full of cell phones. People carry them everywhere: to the beach, the desert, the corner store”^{17/}

The foreign experience is relevant because it shows that CPP is successful in a variety of cultures and regulatory environments. Opponents of CPP have not demonstrated (and cannot demonstrate) anything that is sufficiently unique about the U.S. market to invalidate the wide range of international successes. The international CPP model thus provides useful insight into the benefits of the CPP service option, and should be taken into account by the Commission in this proceeding.

2. Without CPP, U.S. Consumers Are Denied Fully Half the Value of Wireless Service

The international model also demonstrates the detriment to U.S. consumers who do not have the CPP service option available. Unlike consumers in countries that have implemented CPP, U.S. customers are denied the full value of wireless service, *i.e.*, the *practical* ability to receive incoming calls. As described above, the vast majority of U.S. wireless subscribers disclose their wireless telephone numbers to only a handful of persons. Indeed, more than 45 percent of all users do not know their wireless numbers without looking them up.^{18/} As a result, inbound traffic to wireless handsets in the U.S. is dramatically less than to landline phones. Where CPP is available, inbound and outbound traffic are much more evenly balanced.

These striking statistics illustrate the United State’s inability to participate fully in the global telecommunications marketplace. With most Asian and European countries already

^{17/} Sheldon Teitelbaum, *Cellular Obsession*, WIRED, Jan. 1997, at 146.

^{18/} See MOBILE PHONE NEWS at 6 (citing a survey results from the Strategis Group).

equipped with digital systems that provide a longer battery life for wireless phones, as well as the CPP service option, it is evident that overseas consumers are offered the full array of benefits associated with wireless service. The United States, which is just now moving to digital systems and which does not offer CPP, does not provide this level of service and flexibility to consumers. The longer battery life associated with digital service, advanced services, *e.g.*, short-messaging, and CPP will advance CMRS as a true competitor in the U.S. and international telecommunications marketplace.^{19/} It is thus the perfect time for the United States to implement CPP and “catch up” with the rest of the world.

III. THE NOTICE OF PROPOSED RULEMAKING SHOULD BE LIMITED TO THE TWO ISSUES THAT MUST BE RESOLVED BEFORE CPP CAN BE IMPLEMENTED

The Commission should focus the NPRM on the minimum rules necessary for the proper implementation of CPP, namely billing and collection and consumer notification. As Vanguard noted in its reply comments, adopting the path of minimum necessary regulation is consistent with the Commission’s goal of promoting consumer choice and the wide availability of competitive services.^{20/}

^{19/} CPP, which increases the overall demand for CMRS service, also will increase demand for ancillary wireless services such as voice-mail and text messaging. Such an increase in demand will result in lower prices and greater availability of these service options for consumers.

^{20/} See Vanguard Reply Comments at 16.

A. The Commission Must Adopt Uniform Billing and Collection Rules**1. The Availability of LEC Billing and Collection Will Determine Whether CPP Will Be Implemented Successfully**

Billing and collection by local exchange carriers ("LECs") is critical to the success of CPP, providing the essential link to the customers who make CPP calls. Since CMRS providers have no direct relationship with LEC customers, or the calling party, the LECs must be required to provide the CMRS carrier with the billing and collection services necessary to bill those LEC customers that dial CPP wireless phones. While certain alternatives to LEC billing and collection have been suggested in place of LEC billing, including wireless billing and individually negotiated LEC/CMRS agreements, these solutions will not work. Indeed, without a LEC billing mechanism in place, CMRS providers will be unable to be compensated for the CPP service they provide and, therefore, will be unable to offer the CPP service option.

a. Wireless Billing and Collection Is Practically and Economically Infeasible

As a practical matter, LEC billing and collection is essential to prevent undue customer confusion and inconvenience arising from multiple bills from numerous wireless providers. Indeed, in certain areas of the United States *it is conceivable that consumers who place calls to wireless phones from their landline phones could receive bills from up to ten wireless providers.*^{21/} This would cause undue consumer confusion, not to mention the inconvenience of

^{21/} These include A and B block PCS licensees, A and B block SMR licensees, A and B block cellular licensees, C block PCS licensees, and potentially D E and F block licensees. Such is the case Vanguard's Allentown, Pennsylvania market area. The number could increase dramatically if the customer calls wireless customers in other markets. A landline customer who makes calls to CPP customers throughout the United States could receive dozens of monthly bills.

having to pay so many different wireless providers, in addition to a landline provider and an interexchange carrier, on a monthly basis.^{22/}

In addition to creating unwanted consumer confusion, billing and collection for CPP by wireless providers is economically infeasible. In many cases, the costs of generating bills for calls placed to wireless subscribers could far outweigh the charges on the bills. In Vanguard's own experience, for instance, the cost of generating a bill is approximately \$2.50 to \$3.00,^{23/} while the cost of adding a call (a roaming call in Vanguard's experience) to an existing bill is only \$0.05. Given that the average length of wireless calls is approximately 2.5 minutes and that CPP charges will be no higher than current air time charges, with the average cost of a call at \$0.36 to \$0.37 per minute,^{24/} a landline customer would have to make three calls to a Vanguard CPP customer before Vanguard would recover the costs of simply generating the bill. When the other costs of billing and collection are considered, in most cases the cost to bill and collect would exceed the total charges for the calls.

^{22/} Indeed, roaming among wireless providers works only because wireless customers receive one bill. What is different about roaming, however, is that wireless providers share mutual interests in allowing callers to roam onto their networks and billing those calls to consumers. In the present case, LECs have no incentive to assist wireless providers, but rather want to retain their customers and stifle competition.

^{23/} This includes the costs of recording, transmitting and formatting the bills as well as the costs of printing, stuffing, and posting of the bills and the envelopes. It does not include, however, processing costs, collection costs, or the costs of finding names and addresses. See Declaration of Sandy Kiernan, Carrier Relations Manager at Vanguard Cellular Systems, Inc. (attached hereto) at 1 ("Kiernan Declaration").

^{24/} See *id.*

Bad debt for wireless providers also will substantially increase if billing and collection is not provided by the LECs. In those cases when bills to LEC customers are small, it will be essentially impossible for wireless providers to collect from consumers who do not pay because the costs of collection would far exceed the potential revenues.^{25/} Because LECs already provide billing and collection for their own customers, wireless billing and collection would be an enormous waste of resources for wireless providers.

Thus, it is almost certain that, for most wireless providers, the cost of generating bills for only a few calls will be higher than the cost of the calls themselves. Yet, even though the cost of adding the calls to the LEC bills would be minimal compared to the cost to wireless providers to generate and send many CPP bills every month, LECs have been unwilling to agree to bill for CPP calls.

Vanguard has also investigated the use of a national clearinghouse for CPP billing and collection, believing that such a specialized facility would have the ability to reach nationwide agreements with the LECs. Like other alternatives to LEC billing, however, the national clearinghouse presented the same or similar problems, with certain LECs unwilling to negotiate with the clearinghouse.^{26/} In addition, Vanguard was unable to locate an entity that was capable of providing ubiquitous billing and collection across the country.

^{25/} *Id.*

^{26/} See text discussion *infra* at III.A.1.b (discussing LEC unwillingness to negotiate billing and collection for CPP).

b. *Individual Negotiations with LECs Are Economically Burdensome and Time-Consuming*

The option of individual LEC/CMRS arrangements, as suggested by some parties, is not a suitable alternative to LEC billing and collection. Based on Vanguard's experiences, individual negotiations with LECs for billing and collection services will prove painstakingly slow and economically infeasible. Proof of the problems associated with individually negotiated agreements comes from Vanguard's own interconnection negotiations with several LECs throughout the country, which still are not fully completed. Although Vanguard has now completed negotiations for 13 of 14 interconnection agreements it sought in 1996, Vanguard has yet to even begin negotiations with many rural ILECs. In fact, it has taken Vanguard over 21 months, with three in-house counsel, two carrier relations personnel and three outside counsel to complete those 13 agreements.^{27/} Based on this experience, Vanguard suggests that subjecting billing and collection to individualized, voluntary negotiations will prevent implementation of CPP based on the time alone. In addition, some LECs have demonstrated a complete unwillingness to provide billing and collection for wireless providers.^{28/} Such refusal by the LECs will make it impossible for wireless providers to implement CPP on a nationwide basis.

^{27/} See Kiernan Declaration at 1-2.

^{28/} See Letter of David D. Kerr, Executive Director of Access and Interconnection Marketing at Southwestern Bell Telephone, to Scott Falconer, Vice President of AirTouch Cellular (dated Nov. 19, 1997) (noting that "it is not in . . . [Southwestern Bell's] best interest to bill and collect for CPP at this time.").

2. LECs Are Not Harmed by Mandatory Billing and Collection

The Commission also should recognize that requiring LECs to provide billing and collection for CPP on LEC local telephone bills will not harm the LECs. The LECs, which already generate their own bills, will be able to recover the costs of billing and collection by charging wireless providers a fee for the service, just as they charge other entities for whom they provide billing services. While LECs likely fear the ultimate results from a successfully implemented CPP regime, *i.e.*, increased competition and consumer choice, these beneficial results do not justify LEC refusals to provide billing and collection. Thus, because the LECs have little incentive to voluntarily provide or negotiate billing and collection services for CPP, the Commission must adopt uniform rules for LEC billing and collection.

3. The Commission Has the Authority to Require LECs to Provide Billing and Collection

a. Section 251 Authorizes the Commission to Define Billing and Collection as an Unbundled Network Element

Although, as described below, the Commission already had ample power to require LEC billing and collection, the 1996 Act gave the Commission new authority to do so. As described in Vanguard's comments and reply comments, both Section 272(c)(1)'s non-discrimination provisions, and Sections 251's requirement that local exchange carriers provide nondiscriminatory access to network elements on an unbundled basis provide the Commission with ample authority to require LECs to provide billing and collection services for the provision of CPP by CMRS providers.^{29/}

^{29/} See Vanguard Comments at 3; Vanguard Reply Comments at 8.

Indeed, pursuant to Section 251, the Commission has the authority to define which network elements must be made available by the LECs.^{30/} In making such a determination, the Commission is required to consider whether: “(A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.”^{31/} That test is met here. As shown above, wireless providers do, in fact, require LEC billing and collection for the provision of CPP services, and without it will not be able to offer CPP to customers. Consequently, the Commission can and should act to implement a national billing and collection regime to ensure the wireless providers are not denied the ability offer CPP services. Such action is consistent with the 1996 Act and the Commission’s recent decisions. Indeed, as the Commission stated in the NOI, “we have made clear, in the *Local Competition First Report and Order*, that incumbent LECs have an obligation to provide access to unbundled network elements, and that such network elements include information sufficient to enable recipients of unbundled network elements to provide billing services.”^{32/}

^{30/} This authority has been confirmed by the Eighth Circuit. See *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n. 21 (8th Cir. 1997), cert. granted on other grounds, *FCC v. Iowa Utils. Bd.*, 66 U.S.L.W. 3490 (U.S. 1998).

^{31/} 47 U.S.C. § 251(d).

^{32/} NOI at ¶ 28

b. *The Commission Can Adopt National Billing Standards for CPP Pursuant to Its Authority over Interstate Communications Under Title I*

In addition to its authority under Section 251, the Commission has the power to adopt national billing standards for CPP pursuant to its authority over interstate communications under Title I.^{33/} This power was established twelve years ago in the *Billing Detariffing Order*.

While the *Billing Detariffing Order* detariffed billing and collection services provided by LECs to IXC, the Commission could not have anticipated the significance of LEC billing and collection to the implementation of CPP at that time. In particular, the *Billing Detariffing Order* depended on the ability of IXC to meet their own billing needs, but that is not the case here. Bills for CPP calls placed from landline phones typically will be much smaller than IXC bills. When the cost of generating bills and the risk of facing nonpayment for bills sent to landline customers are considered, it is apparent that wireless providers, unlike IXC, lack the ability to bill for CPP. In addition, there were other alternatives for IXC that are not available for CMRS providers. Under such circumstances, Title I permits the Commission with to impose a national billing and collection regime for CPP.

^{33/} See, e.g., *Detariffing of Billing and Collection Service, Report and Order*, 102 F.C.C.2d 1150, 1169 (1986) ("*Billing Detariffing Order*") (noting that the Commission's Title I powers would allow regulation of exchange carrier provision of billing and collection services to interexchange carriers). Part and parcel of the Commission's decision not to exercise its ancillary jurisdiction in that proceeding was the fact that IXC were completely capable of meeting their own billing needs. That is not the case here.

c. *Section 332 Gives the Commission Authority to Impose a National Regulatory Framework for CPP, Including a National Billing Regime*

As several parties have noted, the Commission has the authority under Section 332 to impose a national regulatory framework for CPP, including a national set of billing standards.^{34/}

Section 332(c)(3)(a) provides that:

. . . . no state or local governments shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.^{35/}

Based on this plain language, it is evident that the Commission, and not the states, has the authority to regulate the rates charged and the entry of CMRS providers. While Section 332 gives the states limited authority over “other terms and conditions,” that language does not include rates and pricing elements, such as billing and collection. This interpretation is consistent with both the basic textual analysis and the legislative history. Indeed, the list of terms and conditions that fall within a state’s lawful regulatory authority included in the House Report for the 1993 Budget Act, which enacted the current provision of Section 332,

^{34/} See AT&T Wireless Comments at 6 (the Commission also has authority over CPP through its plenary authority over the rates for CMRS pursuant to Section 332(c)(3)(a)); Motorola Comments at 8 (suggesting that the Commission has clear legal authority to establish a national policy for CPP under Section 332 and Section 2(b) of the Communications Act); Sprint PCS Comments at 16 (noting that Section 332(c)(3)(a) establishes that the Commission and not the states has the authority to regulate CMRS service offerings.).

^{35/} 47 U.S.C. § 332(c)(3)(a).

demonstrates that the Commission and not the states, has the authority to adopt a uniform set of billing and collection rules for CPP.^{36/}

B. The Commission Should Adopt National Consumer Protection Rules

In addition to adopting a billing and collection regime for CPP, the Commission should implement a nationwide notification policy that ensures that callers are aware they will be charged for a completed CPP call. Caller notification should be the responsibility of the wireless provider and should include an initial branding message that will inform the caller that charges will apply and that the caller has a choice of whether or not to complete the call. In creating a consumer notification standard, however, the Commission must recognize that it is *impossible* for CMRS providers to inform callers of the exact charges associated with a CPP call. Because CMRS providers often have different rate plans for different service offerings, it would be virtually impossible for a provider to estimate the cost of each and every call to each and every calling party. The Commission, therefore, should *not* require that CMRS providers inform callers of the costs associated with each call.

Consistent with its Section 332 authority, the Commission also should preempt all state notification rules to avoid the possibility conflicting state notification requirements. As Vanguard and several parties have noted, CPP cannot be implemented if CMRS providers are

^{36/} H.R. Rep. No. 111, 103rd Cong. 1st Sess. at 261(customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues; transfers of control; the bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis).

subject to varying state regulations.^{37/} Indeed, the problems associated with varying state regulations can be seen in the Washington, D.C. metropolitan area, where it would be possible for Virginia, Maryland and the District of Columbia to impose different notification mechanisms, such as requiring specific, conflicting disclosures, making it impossible for CMRS providers in the D.C. area to offer CPP service without violating the requirements of one or more jurisdictions.^{38/}

Vanguard's own experience in dealing with varying state regulations in the context of E911 cost recovery also demonstrates the level of complexity involved for wireless providers in having to comply with varying state regulations. Because, adjoining states could adopt different methods for recovering all costs, carriers such as Vanguard are subjected to double assessments for one customer if a customer is billed in one state but has a phone number from a different state. As a result of these variations, E911 has now become one of Vanguard's most time consuming and pressing issues. In 1998 alone, Vanguard expects to devote more than one person year to the E911 issue. Thus, without appropriate action by the Commission eliminating the possibility of conflicting state regulations, it is likely that CMRS providers will not be able to provide CPP service in many of their service areas. This is an unreasonable result and contrary to the Commission's pro-competitive goals.

^{37/} See Vanguard Reply Comments at 6; Sprint PCS Comments at 17-18; AT&T Wireless at 6; CTIA Comments at 17-18.

^{38/} This problem becomes even more intractable if the required notification is based on the state where the call originates. CMRS providers then could be subject to dozens of conflicting requirements.

IV. CONCLUSION

For all of these reasons the Commission should issue an NPRM consistent with these comments.

Respectfully submitted,

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DECLARATION OF SANDY KIERNAN

*(This declaration is being submitted with a facsimile signature page.
The original signature page will be submitted to the
Commission once it has been received.)*